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ABSTRACT

Policies and procedures for disciplining students should be designed to teach them responsibility, rather than simply punish them. Providing educational opportunities to behavioral deviants is a problem that does not have a simple solution. However, alternatives to suspension or expulsion must be attempted before these disciplinary actions are taken. This document describes alternatives to suspension, as well as suggesting ways in which discipline problems may be reduced. The legal rights of students (including due process in suspension and expulsion cases) are described, and South Carolina's statutes governing student discipline are included. (Author/DS)

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ALTERNATIVES TO SCHOOL DISCIPLINARY AND SUSPENSION PROBLEMS

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School Disciplinary and Suspension Problems

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Columbia, South Carolina
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The committee is grateful to the following Family Court judges appointed by Judge Calvin Bridges, president of the South Carolina Council for Family Court Judges, for preparing recommended procedures for referring serious disciplinary and truancy cases to the Family Court.

The Honorable J. McNary Spigner
The Family Court of Richland County
The Honorable John Black
The Family Court of Colleton County
The Honorable Maxey G. Watson
The Family Court of Orangeburg County

FOREWORD

The adage, "An ounce of prevention is worth a pound of cure," has important application for school administrators. Dissatisfaction and lack of success in school frequently cause students to become disciplinary problems.

State Superintendent of Education Cyril B. Busbee appointed a task force of superintendents, principals, representatives of educational associations, and State Department of Education staff to study alternatives to school disciplinary and suspension problems in an effort to seek possible solutions.

This publication is a report of the committee's study. It does not attempt to classify misbehavior categories nor determine the seriousness of disciplinary problems that cause students to be suspended or expelled. Rather, it provides information as to various alternatives that can be used in seeking solutions to disciplinary problems.

The committee agrees that proper discipline of students is a prerequisite for an effective educational program. Proper discipline requires action to deal with a student whose behavior is interfering with efforts to provide for educational needs of students who want to learn.

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INTRODUCTION

Gallup polls of public attitudes toward education for the past three years indicate that lack of discipline is considered the number one problem in education and is due primarily to the fact that teachers and administrators are not strict enough. Many school officials have attempted to allay these concerns with stricter rules of student behavior which frequently include suspension or expulsion of students who are disciplinary problems. The Children's Defense Fund, a national advocacy group in Washington, D. C. and Cambridge, Massachusetts, issued a report claiming that more than two million school-age children are excluded from educational institutions and programs as a result of suspensions and expulsions.

The ineffectiveness of suspension in rehabilitating students, criticism from various civil rights groups, court decisions, and statutory enactments protecting students' rights have made it necessary for school officials to seek alternatives to school disciplinary and suspension problems. Alternatives to suspension do not deemphasize proper management of student behavior. Such programs seek to promote proper student conduct through learning and changing of attitudes rather than by punishing. The concept of alternatives to suspension is to substitute persuasion for arbitrary authority in giving students, through self-control, a sense of responsibility to other students and to the school. These alternatives provide rewards for positive action, whereas arbitrary authority seeks to maintain order by rules and enforcement by penalty of suspension or expulsion.

Rules of conduct emphasizing punitive measures for deviant behavior without special programs to change student perceptions and attitudes reflect a negativistic philosophy of control. Eliminating antisocial behavior by suspension or expulsion without alternatives accentuates it. While rules of conduct are essential for the operation of any school system, programs for rehabilitation and inculcation of proper attitudes and aspirations must be provided for students who violate rules of conduct. Penalties without rehabilitation will not achieve lasting results. School discipline should teach student responsibility rather than inflict punishment.

School boards are empowered with the authority to adopt reasonable rules for the discipline and management of schools by various enactments of law and court decisions. Drury and Ray¹ interpret the school board's authority to make rules as final in this respect, and that

¹ Robert L. Drury and Kenneth C. Ray, *Principles of School Law*, Meredith Publishing Company, New York, 1965, p. 46

the court will not interfere unless the board acts unreasonably or in violation of law. Drury and Ray further state:

A court will not substitute its judgment for that of a school board regarding the wisdom or logic of the rules. A court, however, will interfere if a board acts arbitrarily, violates the law, deprives the pupils of rights granted by law, alienates the pupil from proper parental control, or acts in a manner which is completely unrelated to the proper efficiency or conduct of the school system, or the control, training or discipline of the pupils.²

² *Ibid.*, p. 47.

Chapter I

DISCIPLINE PROBLEMS

Factors Responsible

Behavioral psychologists depend heavily on the principle that man behaves in that way he thinks best to achieve his goal. Another principle is that all behavior is caused; or, there is a reason for all behavior. Prior to the era of behavioral science, misbehavior was perceived as a deliberate attempt of the pupil to create problems or as caused by demoniac influences. Most educators attribute misbehavior to one or more of the following: frustration, inhibition, broken homes, ill health, or personal maladjustment. Sheviakov and Redl list the following factors to which they attribute pupil misbehavior: 1) dissatisfaction in schoolwork, 2) emotional unrest in relationship to others, 3) disturbances in the classroom climate, 4) lack of harmony between classroom control and the need of a pupil for emancipation, 5) emotional strains that accompany sudden changes from one activity to another, and 6) composition of the classroom group.¹ The National Education Association claims that according to researchers the "big four" reasons for discipline problems are the schools themselves, teachers, parents, and the youth culture of today.²

Reducing Discipline Problems

Studies show that there are many factors that cause students to become discipline problems, and many are not school related or influenced. There are many proponents of the theory that a large proportion of the problems of conduct are rooted in academic failure or dissatisfaction with instructional and administrative demands. Academic difficulty and a feeling of alienation frequently cause emotional frustrations that are released by antisocial behavior. Many serious disciplinary problems can be prevented if meaningful instructional programs are offered providing opportunities for students to experience success, and programs of guidance service that identify students with special problems. Following are some strategies for reducing discipline problems.

School Orientation—According to psychologists, behavior is determined by one's perception and understanding rather than the realities

¹ "Discipline," *Encyclopedia of Educational Research*, 3rd edition, pp. 292-293.

² National Education Association, "Schools Search for the Answer to 'Sticky Problems of Discipline,'" Washington, D. C., July, 1974.

of the situation. Frequently, misunderstandings or lack of understandings cause students to become disciplinary problems or result in conflicts between parents and school. Students and parents cannot be expected to support and comply with regulations without knowledge of the school program. Orientation of students and parents should be provided concerning the school's (1) codes of conduct, (2) curriculum, (3) administrative procedures for handling disciplinary problems, (4) special services, (5) procedures for requesting parent-teacher conference, (6) grading system, (7) schedule and calendar, and (8) extracurricular activities.

Regular Attendance—The Compulsory Attendance Law³ requires that a parent or guardian send his child or ward, age seven to sixteen inclusive (up to age seventeen) to a public or a parochial or denominational school, or other programs which have been approved by the State Board of Education. The provisions of the law do not apply to the following as listed in the Section 21-757.2.

Exceptions.

- (a) Any child who has been graduated from high school or has received the equivalent of a high school education from a school approved by the State Board of Education, or member school of South Carolina Independent Schools' Association, or a private school in existence at the time of the passage of this article;
- (b) Any child who obtains a certificate from a psychologist certified by the State Department of Education or from a licensed physician stating that he is unable to attend school because of a physical or mental disability; provided there are no suitable special classes available for such child in the school district where he resides;
- (c) Any child who has completed the eighth grade and who is determined by the court to be legally and gainfully employed whose employment is further determined by the court to be necessary for the maintenance of his home;
- (d) Any child who, at the time this article becomes law, is ten years of age or older and has been out of school for three years or more, provided there are no special classes in the school district for the child to attend;
- (e) Any child who is married or has been married, any unmarried child who is pregnant or any child who has had a child outside of wedlock;

³ Code of Laws of South Carolina, Section 21-757.

- (f) Any child who has reached the age of sixteen years and whose further attendance in school, vocational school, or available special classes is determined by a court of competent jurisdiction to be disruptive to the educational program of the school, unproductive of further learning, or not in the best interest of the child, and who is authorized by such court to enter into gainful employment under the supervision of the court until age seventeen is attained. Provided, however, that prior to being exempted from the provisions of this article, the court may first require that the child concerned be examined physically and tested mentally to assist the court to determine whether or not gainful employment would be more suitable for the child than continued attendance in school. Such examination and testing shall be conducted by the Department of Youth Services or by any local agency which the court determines to be appropriate; provided, further, that the court shall revoke the exemption herein provided upon a finding that the child fails to continue in his employment until reaching the age of seventeen years.

Students in Exception (e) still have the right to attend the public schools if they wish.

Students who attend school regularly create fewer disciplinary problems than students who are absent habitually. An accurate system of student accounting should be followed and parents should be informed when students are not in attendance. Students who attend school regularly should receive appropriate recognition.

The principal or designee should contact the parents or guardian of a student who has been absent from school three consecutive days. The attendance supervisor may identify the reason for nonattendance and effectuate a solution of the problem by visiting the home of a student absent without justifiable reasons. The attendance supervisor should make a written report of the home visit to the principal.

The principal or designee should schedule a conference with the parents or guardian if the student's attendance does not improve after a visit by the attendance supervisor. Parents or guardians should be advised that they may be subject to judicial fine or imprisonment if they fail to make their children enroll and attend school as required by law:

Any parent or guardian who neglects to enroll his child or ward or refuses to make such child or ward attend school shall, upon conviction, be fined not more than fifty dollars or be imprisoned not more than thirty days; each day's absence shall constitute a

separate offense; provided, the court may in its discretion suspend the sentence of anyone convicted of the provisions of this article.⁴

The case should be referred to the intake section of the Family Court if the student continues to be truant from school. If the county does not have a Family Court, the case should be referred to the Probate Judge. Any adult who willfully violates, neglects, or refuses to obey or perform any lawful order of the Family Court may be processed against for contempt of court.⁵

Teacher Inservice Training—The role, influence, and authority of the teacher have changed drastically in the past ten years. A continuous program of inservice training should be provided to keep professional competencies updated to develop an understanding and meet changing needs of students. This training would help teachers acquire techniques for getting students to participate in classroom activities and develop their sense of responsibility for proper behavior in an effective learning environment. The program of inservice training should help teachers acquire knowledge as to factors responsible for deviant behavior. Teachers need to develop competencies in providing instruction and demands that are commensurate to the abilities, interest, and achievement levels of students, as well as in identifying and providing for student needs.

Relevant Curriculum—Students who are interested in school and experience academic success seldom create disciplinary problems. One important task in reducing discipline problems is to develop a program of studies that is relevant to the interests and needs of students. Such a program must provide for individual differences. Data that should be evaluated in determining the relevancy of the curriculum are as follows:

1. Number and characteristics of dropouts
2. Follow-up studies of graduates
3. Age-grade distribution
4. Grade distribution and percentage of failures for each course
5. Evaluations by staff
6. Accreditation reports from the State Department of Education

⁴ Code of Laws of South Carolina, 1974 Cumulative Supplement, Section 21-757.1, p. 164.

⁵ Code of Laws of South Carolina, 1974 Cumulative Supplement, Vol. 4, Section 15-1095.23, p. 76.

7. Discussions with the staff members of programs offered and why
8. Results of testing programs

Codes of Conduct—A number of court cases have indicated that school rules must be reasonable, clear, and fair. They should be designed to assure the orderly operation of the educational system rather than reflecting the personal or arbitrary preferences of school authorities. In establishing or revising codes of student discipline and/or student rights, administrators may find it helpful to keep in mind the following:

1. Get input from many sources.
2. Be aware of the law.
3. Make guidelines clear and relevant.
4. Codes should be in written form and disseminated widely.
5. Regular reevaluation of codes.⁶

Time-Out Room—The purpose of the time-out room should be to provide a place where the student may be assigned to "cool" off for ten to fifteen minutes. The teacher sends the student to the room when a confrontation appears to be imminent, or in some cases, the student may decide to go upon his own volition if he thinks he is on the verge of misbehavior.

Guidance Services—Each student should be provided individual and group guidance to help him feel that he is understood, work out hostilities, and be known as an individual on a personal basis. The services may be provided by a counselor or an effective teacher. A student should know a member of the faculty that he can turn to when he has a problem.

Recruitment and Assignment of Teachers—Procedures for recruiting teachers should insure the employment of qualified and effective teachers. Orientation for new teachers should provide information on the school's educational program including the following topics concerning the operation of the school:

1. philosophy and objectives
2. policies, rules and regulations
3. procedures for record keeping and appropriate forms
4. recommended instructional techniques and materials available

⁶ Educational Research Service, "Codes of Student Discipline and Student Rights," Arlington, Virginia: A National Resource for the Administrative Teams of School Systems, 1975, p. 5.

5. supervisory services
6. procedures for evaluating and reporting pupil progress
7. special services provided for students
8. classroom management and discipline
9. procedures for requisitioning supplies and equipment
10. procedures for handling serious disciplinary problems
11. school-community relations
12. procedures for expressing grievances or making recommendations for changes in administrative policies

A teacher's interest, training, and strengths should be considered in making the assignment. It is unrealistic to expect a teacher to be effective in teaching a subject for which he is not properly trained, or has no special interest.

CHAPTER II

ALTERNATIVE PROGRAMS

Programs

An alternative to school disciplinary and suspension problems is a special program designed to change antisocial and hostile attitudes into desires for acceptable behavior through planned learning experiences. The program gives emphasis to a positive approach in changing behavior rather than to a negative approach of punishment which usually reinforces hostility and antisocial attitudes. In reference to the effectiveness of punishment, Travers states:

Punishment is a socially approved practice, rather than one endorsed by scientific research. The results of punishment are not generally those the punisher wishes to produce. At best, punished response is repressed, that is inhibited, but it is likely to reappear when the possibility of punishment is removed. For this reason, the results of punishment are likely to be variable and rather unpredictable. If it is at all possible, methods other than punishment should be used for preventing the appearance of unwanted behavior.¹

There is a dearth of research as to effective alternatives to school disciplinary and suspension problems. A review of available research indicates that there is no one program that can be considered *the* best or that will meet the needs of all students with deviant behavior. Several alternatives should be available to the student who has misbehaved but who can learn to adjust to requirements for proper behavior. Students usually respond positively when offered a choice of alternatives rather than suspension. Students should be given opportunities to return to the regular programs when the alternative has been effective in changing antisocial, hostile attitudes and behavior.

Parents, Student, Teacher, and Administrator Conference—Students often mirror attitudes and values of their parents. It is important to get the involvement and cooperation of parents in resolving disciplinary problems of students. The conference should be scheduled immediately after a problem. A report of the conference

¹ Robert M. W. Travers, *Essentials of Learning*, The MacMillan Company, New York, 1967, p. 56.

should be recorded and filed. After the conference, a letter should be written to the parents stating the problem discussed and the decision reached in the conference. The student should receive a copy of the letter.

In-School Suspension—The student who is a disciplinary problem is taken out of the regular classroom and put into a special classroom. The program is usually administered by a full-time teacher who has a genuine interest in youth. The program performs the joint functions of quarantine and instruction.

Students serve out the "term" of their suspension, still doing the work they would normally be required to do, but with a student-teacher ratio of only 1 to 10 or less. This ratio makes it possible for the student to keep pace with his normal classwork, and gives him an opportunity to talk about problems that have caused his misbehavior while the teacher listens sympathetically and offers guidance for rehabilitation.

It is essential that there be frequent communication between teachers of the special classes and regular teachers to avoid frustration when the student is returned to the regular schedule.

Behavioral Contract—A written agreement on behavior expected should be developed with assurance that the signers know specifically what is expected. The contract should meet the following criteria:

1. contain a mutually agreed-upon goal for expected behavior,
2. be reasonable and possible,
3. should not be terminated without the consent of all parties,
4. should list penalties for violation, or failure to fulfill any of the provisions,
5. should have a specific time frame and review dates,
6. should be signed by the student and his parent in a scheduled conference if a student is less than 18 years of age,
7. and should list the school official responsible for monitoring the contract.

The Guidance Clinic—The purpose is for a trained counselor to identify student needs through evaluation of appropriate test data and counseling sessions. The objectives are to insure that the student's educational program is commensurate to his achievement and mental attitude levels; also, to change antisocial attitudes into desire for behaving in an acceptable manner. The plan for changing attitudes may include individual and group sessions or workshops for staff as well as students to:

1. convey the idea of concern on the part of the school staff for each student no matter what form his overt reactions might take, thereby placing the focus on the individual rather than on specific segments of his behavior;
2. help the student evaluate the issues involved—namely, the need for rules and standards, their adequacies and possible shortcomings, and their implications for everyone in the school setting;
3. to assist the norm-violating student in attaining insights into the reasons for his unacceptable behavior, which might lead him to consider alternate reactions that are both acceptable to himself and consistent with school policies.²

Work Assignment—This option is based on the concept that a student should render some constructive services as retribution for misbehavior. The student and his parents should agree to the work assignment and the period of time for the assignment. It should not be the only alternative offered and the terms should be specified in a written contract.

After-School Detention—The program is staffed with teachers who supervise meaningful learning experiences for students for a specific period of time after school hours. Parents should be notified in writing prior to the date of scheduled detention, and instructed to make arrangements for transportation, if needed.

Alternative Programs and Schools—The objective is to provide more options to meet the needs of those who are dissatisfied or have difficulty in adjusting to the regular school program. Most alternative schools and programs differ from the regular schools in terms of (1) the learning model, (2) the organizational model, and (3) the governance process. Specific information is given concerning some of the alternative programs and schools in South Carolina public schools in the publication entitled, "Alternative Programs and Schools," prepared by the State Department of Education.

Evening School—Classes scheduled after the regular school day for students who are disciplinary problems should be staffed with certified teachers, and planned to rehabilitate the student to return to the regular school program. Students assigned to the evening school should not be denied the privilege of participating in extracurricular activities or social events of the regular school program.

² Robert A. Atherley, "The Counselor and Discipline: An Expanded Viewpoint," *Journal of Secondary Education*, January, 1971, p. 36.

Adult Education—Local boards of education are authorized to assign students to adult education classes when they exhibit an unusual educational need which can be served better by this program or when they exhibit physical, social, or economic problems that can be met more effectively through adult education. Pursuant to Sections 21-752 and 21-752.1, *Code of Laws of South Carolina*, students between ages 6 and 21 have a statutory right to attend the free public schools of this state, therefore, a local board of trustees may not summarily transfer a student to an adult education program without consent from the parents if the student is less than 18 years of age. A student who is between 18 and 21 years of age may consent to a transfer to an adult education program. If student or parents object to the transfer, a due process hearing should be afforded.

Accreditation standards permit a student to receive regular high school credit for courses completed in approved adult education programs provided that for each unit earned a minimum of 120 hours has been spent in class time in that subject at that level and the teacher is properly certified to teach the course. No student shall be allowed to apply more than a total of six units earned in a summer school, and/or through approved correspondence courses, and/or adult educational programs to the 18 units required for a State high school diploma.

When assigned to adult education programs, recalcitrant students tend to change their behavior to be in concert with the behavior of adults. The substitution of adults for peers as a reference group results in a change of behavioral cues. An individual tends to identify himself with or aspires to take on some of the behavioral traits of his reference group. Adults, as a reference group, motivate recalcitrant students to develop more mature and acceptable behavior.

Transfer of Student—The General Assembly has enacted law that authorizes school officials to transfer a student to provide a different environment.

The board or a designated administrator may transfer a pupil to another school in lieu of suspension or expulsion but only after a conference or hearing with the parents or legal guardian. The parents or legal guardian may appeal a transfer made by an administrator to the board.³

Corporal Punishment—This is the act of inflicting bodily punishment usually with a paddle or strap. Corporal punishment is based on the concept that a student should be punished for infraction of rules and

³ *Code of Laws of South Carolina*, 1974 Cumulative Supplement, Vol. 5, Section 21-775, p. 167.

regulations, and that fear of pain by corporal punishment will deter misbehavior.

The legality of administering corporal punishment in a reasonable and humane manner has been upheld generally throughout the nation under the doctrine of *in loco parentis*.⁴

The United States Supreme Court affirmed without comment the decision of the United States District Court for the Middle District of North Carolina, Greensboro Division 395 F. Supp. 294, on the issue of corporal punishment of school children. Significant language of this decision follows:

After holding that a child had a legitimate interest in avoiding arbitrary or unnecessary infliction of punishment, the court set up certain procedural safeguards to protect this interest. They were: "First, except for those acts of misconduct which are so anti-social or disruptive in nature as to shock the conscience, corporal punishment may never be used unless the student was informed beforehand that specific misbehavior could occasion its use, and, subject to this exception, it should never be employed as a first line of punishment for misbehavior. The requirement of an announced possibility of corporal punishment and an attempt to modify behavior by some other means—keeping after school, assigning extra work, or some other punishment—will insure that the child has clear notice that certain behavior subjects him to physical punishment. Second, a teacher or principal must punish corporally in the presence of a second school official (teacher or principal), who must be informed beforehand and in the student's presence of the reason for the punishment. The student need not be afforded a formal opportunity to present his side to the second official; the requirement is intended only to allow a student to protest, spontaneously, an egregiously arbitrary or contrived application of punishment. And finally, an official who has administered such punishment must provide the child's parent, upon request, a written explanation of his reasons and the name of the second official who was present."

The South Carolina General Assembly has made provisions for a district board to authorize the use of corporal punishment. Section 21-776, 1974 Cum. Supp., 1962 Code of Laws of South Carolina states: "The governing body of each school district may provide

⁴ Baker v. Owen, 44 LW 3237, 10/20/75.

corporal punishment for any pupil that it deems just and proper." This provision is presently interpreted that the district board may authorize corporal punishment by rules or regulations. If it is not authorized by the district board, it is prohibited.

When implementing the Student Discipline Law, it must be remembered that the procedural protection of the student's interest is required. The student should also be given an opportunity to rebut the charges against him. Corporal punishment must not be exercised at a school unless specified misbehavior warrants its use. Corporal punishment should be used only in the presence of another faculty member who was told in the student's presence of the reason for the punishment. A written explanation should be provided to the child's parents if they request it.

Family Court—The following recommended procedures to be followed in referring serious disciplinary and truancy cases to the Family Court was prepared by a committee of Family Court judges appointed by Judge Calvin Bridges, president, South Carolina Council of Family Court Judges:

When a child who is less than 17 years of age commits a criminal act in or about the school, the principal should investigate the alleged criminal act thoroughly, (i.e. if the alleged crime is not serious enough for the police or sheriff's department to investigate). After the investigation, if the principal feels the circumstances warrant, he may come to the Intake Office of the Family Court for a conference with the Intake Officer, or with the Chief Probation Officer if the Court has no Intake Officer. The Court Officer may recommend informal action be taken by the school, may make informal adjustment himself, or have the principal sign a petition for Court action to be taken.

It is absolutely necessary that the principal arrange to have all eye witnesses present at any Court hearing, as well as all pertinent evidence available. After a full hearing on the merits, if the child is found guilty beyond a reasonable doubt, the Judge may then intervene in the affairs of the child.

Probation counselors are not police officers, truant officers or criminal investigators, and should not be called upon to act as such. They may be called upon to assist with one of their probationers, but they have no license to interfere in the affairs of any child who is not on probation.

You are reminded that the Family Court should be the last resort and that all other remedies or avenues must have been exhausted before petitioning the Family Court.

Requirements for accepting petitions may differ from county to county because the number of administrative and probation staff varies among the different Family Courts.

Before a petition will be accepted by most Family Courts concerning allegations that a child, under 17 years, is constantly truant or disruptive in school, the school officials should first have taken the following measures:

1. Hold conference with the child and the child's parents about the conduct and behavior of the child.

2. If the child continues to be truant or disruptive there should be a follow-up conference with the parents and if all other alternatives fail the child should be placed in an in-school suspension program. The child should also be scheduled for educational and psychological evaluation. The school psychologist could arrange for complete psychological evaluation with cooperation of the vocational rehabilitation agency or mental health center.

3. Referral to other community or state agencies should be explored prior to resort to the Court. (i.e. Department of Mental Retardation, Vocational Rehabilitation, Department of Mental Health, Department of Social Services, etc.).

4. If the evaluation reveals no learning disability, no retardation, and no emotional disability which would cause such truancy or disruptive behavior, and the child continues to be truant or disruptive in school, then a petition should be presented to the Family Court.

(See appendix for names and addresses of South Carolina Family Court judges.)

Chapter III

LEGAL RIGHTS OF STUDENTS

Recent legislation and court cases have emphasized that students have property and liberty rights that are protected under the due process clause of the Fourteenth Amendment to the United States Constitution. School officials cannot deny students these rights by suspension and expulsion without due process.

Due process is generally characterized as procedural and substantive. Procedural due process essentially concerns the mechanics or step-by-step operation of a particular hearing, whereas substantive due process goes to the essence of fundamental rights and principles of justice that limit the government's power to deprive a person of his life, liberty, or property. In administering discipline, due process is concerned with the property and sometimes liberty interests of students. (See *Woods v. Strickland* and *Goss v. Lopez*.)

Due process is sometimes characterized in terms of fundamental fairness. What constitutes fundamental fairness may vary from one situation to another and may depend upon factors in issue, the quality and quantity of the offense, the age of the child, the severity of the punishment required for the offense, and the amount of time and expense involving school authorities who could otherwise be occupied with different school matters.

Due process rights may vary according to the seriousness of the particular disciplinary situation; however, as a general rule more rights should be afforded a student as the seriousness of the charge increases.

Due process rights may include:

1. The right to counsel, including appointed counsel
2. The right to call or subpoena witnesses
3. The right to cross-examine witnesses
4. The right to confront witnesses used against the student
5. The right to an impartial tribunal
6. The right to a record of the proceedings
7. The right to administrative and judicial review

Furthermore, one should keep in mind that in order to exercise the foregoing considerations a student should at least be given the rules by which he is expected to adhere. Thus, he must have sufficient notice of any prescribed conduct.

The General Assembly of South Carolina enacted statutory provisions for student discipline. These provisions are listed in Chapter VI, pages 166 and 167, Article 2.1, Sections 21771 through 21777 of the 1974 Cumulative Supplement of Volume V, *South Carolina Code of Laws*.

The author of "Students' Rights, Responsibilities, and Resources in South Carolina" states:

A liberal interpretation of recent court cases suggests that due process standards should be applied to disciplinary proceedings. In the following areas, due process requirements may have to be met if, by their very nature, they suggest punitive intent or motive.

1. Suspension from playing sports
2. Participation in other extracurricular activities
3. Denial of a diploma
4. Transfer of home instruction
5. Transfer to another school

Again, the timing and degree of formality of a hearing in any disciplinary action may vary according to the seriousness of both the charges and the possible punishment.

In those counties where a juvenile domestic relations court exists, the local district schools are obligated to report any suspension by expulsion to that court or other court having jurisdiction over juveniles.¹

Suspensions and Expulsions

Some students are incorrigible and will not respond to efforts to help them adjust to the proper conduct required for an effective learning environment. School officials must suspend or expel such students to protect the rights and opportunities of other students. Mr. Justice White in the majority opinion of the Court in the case of *Goss v. Lopez* stated:

The difficulty is that our schools are vast and complex. Some modicum of discipline and order is essential if the educational function is to be performed. Events calling for discipline are frequent occurrences and sometimes require immediate effec-

¹ South Carolina State Department of Education, "Students' Rights, Responsibilities, and Resources in South Carolina," Columbia, South Carolina, 1975.

tive action. Suspension is considered not only to be a necessary tool to maintain order but a valuable educational device.²

Expulsion has been defined as a putting or driving out, ejection, banishment, or a cutting off permanently from the privileges of an institution or society. (*Stetson University v. Hunt*, 88 Fla. 510, 102So 637, 630.) While on the other hand suspension has been defined as a temporary cutting off or debarring one, as from the privileges of an institution or society. (*Stetson University v. Hunt*, 88 Fla. 510, 102So 637, 639.) In South Carolina, statutory provisions governing suspensions and expulsions of students, which also include some due process provisions, are contained in Section 21-771 et seq. However, some of these provisions have been modified recently in their application by the United States Supreme Court so that students faced with temporary suspensions have a property and liberty interest, as noted above, protected by the United States Constitution. Consequently, prior to any temporary suspension, not *after* one has occurred, the suspending authority must pursue at least the following steps:

1. The student must be given oral or written notice of the charges against him, and if he denies them,
2. he must be given an explanation of the evidence that the authorities have, and
3. he must be given an opportunity to present his version of what happened, and
4. notice of action to be taken by authorized school administrator, a decision or verdict.

Even in cases of long-term suspensions, the preceding due process requirements should be followed. It is suggested that school boards should promulgate policies that would require even greater due process rights than required by statute in cases where serious allegations of wrongful conduct, which if sustained, may impose a debilitating stigma upon a student.

² *Goss v. Lopez*, 43 LW 4185, 1/22/75.

Chapter IV

LAWS ON DISCIPLINE

The South Carolina General Assembly has passed various laws listing authority and procedures for discipline. They are as follows:

Section 21-230: General Powers and Duties of School Trustees.

- (3) Promulgate rules and regulations. Promulgate rules prescribing scholastic standards of achievement and standards of conduct and behavior that must be met by all pupils as a condition to the right of such pupils to attend the public schools of such district. The rules shall take into account the necessity of proper conduct on the part of all pupils and the necessity for scholastic progress in order that the welfare of the greatest possible number of pupils shall be promoted notwithstanding that such rules may result in the ineligibility of pupils who fail to observe the required standards, and require the suspension or permanent dismissal of such pupils.¹

Article 2.1

*Discipline*²

Section 21-771: Trustees May Expel, Suspend or Transfer Pupils; Petition for Readmission.

Any district board of trustees may authorize or order the expulsion, suspension, or transfer of any pupil for a commission of any crime, gross immorality, gross misbehavior, persistent disobedience, or for violation of written rules and regulations established by the district board, county board, or the State Board of Education, or when the presence of the pupil is detrimental to the best interest of the school. Every expelled pupil shall have the right to petition for readmission for the succeeding school year. Expulsion or suspension shall be construed to prohibit a pupil from entering the school, or school grounds, except for a prearranged conference with an administrator, attending any day or night school functions or riding a school bus. The provisions of this section shall not preclude enrollment and attendance in any adult or night school. [1973 (58) 407.]

¹ Code of Laws of South Carolina, 1974 Cumulative Supplement, Vol. 5, pp. 80-81.

² Code of Laws of South Carolina, 1974 Cumulative Supplement, pp. 166-167.

Section 21-772: Suspension of Pupils by Administrators.

Any district board may confer upon any administrator the authority to suspend a pupil from a teacher's class or from the school not in excess of ten days for any one offense and for not more than thirty days in any one school year but no such administrator may suspend a pupil from school during the last ten days of a year if the suspension will make the pupil ineligible to receive credit for the school year without the approval of the school board unless the presence of the pupil constitutes an actual threat to a class or a school or a hearing is granted within twenty-four hours of the suspension. n1973 (58) 407.]

This section of the *Code of Laws of South Carolina* must be applied in light of a recent Supreme Court Case *Goss v. Lopez* which states that even in short term suspensions an authorized school administrator must provide a "mini due process hearing" prior to rendering a decision to suspend a student. This due process procedure must consist of the following three elements: (1) notice of the alleged wrongful conduct, (2) notice of the type of evidence against the accused student and (3) an opportunity to let the student tell his side of the story. However, this case further stated that in certain emergency situations an authorized school administrator may summarily suspend a student without the above mentioned "mini due process hearing." In short, an authorized school administrator may summarily suspend a student when he or she poses an immediate danger to person or property or whose activities represent an ongoing threat of disruption to the educational process.

Section 21-773: Notices of Suspensions; Conferences with Parents.

When a pupil is suspended from class or a school, the administrator shall notify, in writing, the parents or legal guardian of the pupil, giving the reason for such suspension and setting a time and place when the administrator shall be available for a conference with the parents or guardian. The conference shall be set within three days of the date of suspension. After the conference the parents or legal guardian may appeal the suspension to the board of trustees or to its authorized agent. [1973 (58) 407.]

Section 21-774: Expulsion for Remainder of Year; Hearings.

The board may expel for the remainder of the school year a pupil for any of the reasons listed in Section 21-771. If procedures for

expulsion are initiated, the parents or legal guardian of the pupil shall be notified in writing of the time and place of a hearing either before the board or a person or committee designated by the board. At the hearing the parents or legal guardian shall have the right to legal counsel and to all other regular legal rights including the right to question all witnesses. If the hearing is held by any authority other than the board of trustees, the right to appeal the decision to the board is reserved to either party. The hearing shall take place within fifteen days of the written notification at a time and place designated by the board and a decision shall be rendered within ten days of the hearing. The pupil may be suspended from school and all school activities during the time of the expulsion procedures. The action of the board may be appealed to the proper court. The board may permanently expel any incorrigible pupil. [1973 (58) 407.]

Section 15-1203: Report to Juvenile Domestic Relations Court
Prerequisite to Expulsion from School.

No child who is required by law to attend the public schools in any county wherein a juvenile domestic relations court has been established shall be suspended by expulsion from the school unless prior thereto the delinquency of such child shall have been reported to the court. (Family Court or other court having jurisdiction over juveniles.) [1945 (44) 154.]

Section 21-775: Transfer of Pupils.

The board or a designated administrator may transfer a pupil to another school in lieu of suspension or expulsion but only after a conference or hearing with the parents or legal guardian. The parents or legal guardian may appeal a transfer made by an administrator to the board. [1973 (58) 407.]

Section 21-846.1: Transfer of Pupils if Enrollment may Threaten to Disturb the Peace.

Whenever the principal, superintendent, or any other responsible school official in charge of a school in this State has reason to believe that the enrollment of certain pupils in a certain school may threaten to result in riot, civil commotion, or may in any way disturb the peace of the citizens of the community in which the school is located, such school official shall notify the sheriff or other law enforcement officer in the county. On being so notified, the sheriff or other law enforcement officer in the county may

remove such pupils from such school and may transfer them, at the direction of the superintendent, to another school in which there appears to be less likelihood of disturbing the peace. Any law enforcement officer is authorized to enforce the provisions of this section.

Section 21-847: When Children May Attend Schools in Adjacent County.

If school children in one county reside closer to schools in an adjacent county, they may attend such schools upon the school authorities of the county of their residence arranging with the school officials of the adjacent county for such admission and upon payment of appropriate charges as herein authorized. The board of trustees in the school district in which the pupils reside shall make written application through its county board of education to the board of trustees of the district in which the school is located for the admission of such children, giving full information as to ages, residence and school attainment, and the board of trustees in the school district, agreeing to accept such pupils, shall give a written statement of agreement. Upon receipt of such application the board of trustees of the school and its county board of education shall determine the monthly per pupil cost of all overhead expenses of the school, which will include all expenses of the school not paid by the State. Upon proper arrangement being made for the payment monthly of such overhead per pupil cost for each child the same shall be admitted to the schools of the adjacent county.

Section 21-849: Transfer to Adjoining District.

When it shall happen that any person is so situated as to be better accommodated at the school of an adjoining school district, whether special or otherwise, the board of trustees of the school district in which such person resides may, with the consent of the board of trustees of the school district in which such school is located, transfer such person for education to the school district in which such school is located, and the trustees of the school district in which the school is located shall receive such person into the school as though he resided within the district.

Section 21-850: Transfer Without Consent of District of Residence.

The trustees of any school district who knowingly permit the enrollment of pupils who have not been transferred with the

consent of the trustees of the district wherein such pupils reside shall be guilty of a misdemeanor and, upon conviction, shall pay a fine not exceeding twenty-five dollars or be imprisoned not more than thirty days.

Section 21-851: County Board of Education May Order Transfer.

When a transfer of pupils from one district to another is sought and the trustees of the latter district unreasonably or capriciously withhold their consent, the county board of education of the county in which the districts are located shall have the right, after hearing, to make the transfer, but only on condition that each pupil so transferred pay semiannually, in advance, if financially able to do so in the opinion of the board of trustees, as tuition, an amount not less than the per capita expenditure from the special tax for operating the school to which the pupil is to be transferred, together with all other charges paid by patrons of such district for any special course or courses.

Section 21-852: Consent Required for Transfer.

No child shall be transferred to an adjacent district without the prior written consent of such child's parent or legal guardian, or, where such child has neither a parent nor legal guardian, the prior written consent of the State Board of Education. Provided, however, transfers of children to adjacent districts prior to June 22, 1973, shall be rescinded upon the written request as provided herein and any such child for whom a request for retransfer to his former district is made shall be returned to such former district.

The board of trustees has authority to regulate or prohibit clubs. Section 21-777, 1974 Cum. Supp., 1962 *Code of Laws of South Carolina* states: "Any district board of trustees may regulate, control, or prohibit clubs or other such activities on school property or during school hours."

Conclusions

Policies and procedures for disciplining students should be designed to teach responsibility and self-discipline rather than punishment. The reality of providing educational opportunities for behavioral deviants is a problem that does not have a simple answer. The question as to whether one disruptive student should demand an exorbitant amount of time from the teacher or administrator to the

detriment of other students is one that requires a decision. The decision should consider all alternatives to suspension or expulsion.

If the presence of a student is detrimental to the school and suspension or expulsion is decided to be the only solution, procedural and substantive due process must be followed to preserve the rights of the student and protect school officials from liability.

APPENDIX

Family Court Judges

The Honorable Robert W. Kemp
Bamberg County Courthouse
Bamberg, SC 29003
(803) 245-5157

The Honorable Roddey L. Bell
Post Office Box 30
Lancaster, SC 29720
(803) 285-6961

The Honorable Jeff D. Griffith, Jr.
116 West Church Street
Saluda, SC 29138
(803) 445-7110

The Honorable Howard K. Williamson, J
216 Chesterfield St
Aiken, SC 29801
(803) 648-6849

The Honorable Harrison R. Swink
Post Office Box 12
Gaffney, SC 29340
(803) 489-0272

The Honorable W. H. Caldwell
Post Office Box 1068
Florence, SC 29501
(803) 665-3096

The Honorable John P. Hazzard
Georgetown County Courthouse
Georgetown, SC 29440
(803) 546-8723

The Honorable James A. K. Roper
Post Office Box 757
Greenville, SC 29602
(803) 242-0900

The Honorable J. Perrin Anderson
Post Office Box 115
Greenwood, SC 29646
(803) 229-6648

The Honorable Winston W. Vaught
Post Office Box 406
Conway, SC 29526
(803) 248-2261

The Honorable W. Frank Rogers, Jr.
Lexington County Courthouse
Post Office Box 37
Lexington, SC 29072
(803) 359-6155

The Honorable Maxey G. Watson
Post Office Box 1525
Orangeburg, SC 29115
(803) 534-5124

The Honorable J. McNary Spigner
Post Office Box 4069
Columbia, SC 29240
(803) 779-3950

The Honorable Harold R. Boulware
Associate Judge
Richland County Courthouse
1401 Sumter Street
Columbia, SC 29201
(803) 779-3950

The Honorable Paul S. McChesney, Jr.
Spartanburg County Courthouse
Spartanburg, SC 29301
(803) 585-4811

The Honorable John M. Turner
Post Office Box 128
York, SC 29745
(803) 327-1134

The Honorable James W. Craven
Post Office Box 56
Charleston, SC 29402
(803) 577-4800

The Honorable Robert R. Mallard
Associate Judge
Post Office Box 56
Charleston, SC 29402
(803) 577-4800

The Honorable Richard E. Fields
Associate Judge
Post Office Box 56
Charleston, SC 29402
(803) 577-4800

The Honorable Charles L. Cuttino, Jr.
Judge, Sumter County Court
Sumter County Courthouse
Sumter, SC 29150
(803) 775-2346 Ext. 28

The Honorable David N. Wilburn, Jr.
Judge, Union County Court
Union County Courthouse
Union, SC 29379
(803) 427-2037

The Honorable Frank E. Rector
Judge, Kershaw County Court
Kershaw County Courthouse
Camden, SC 29020
(803) 432-5092

The Honorable Calvin L. Bridges
Judge, Laurens County Court
Laurens County Courthouse
Laurens, SC 29360
(803) 984-6521

The Honorable Robert H. Cureton
Judge, Oconee County Court
Oconee County Courthouse
Walhalla, SC 29691
(803) 638-5825

The Honorable Michael D. Glenn
Judge, Anderson County Courthouse
Anderson, SC 29621
(803) 226-1553

The Honorable Donald A. Fanning
Judge, Beaufort County Court
Post Office Box 1124
Beaufort, SC 29902
(803) 524-8840

The Honorable Felix B. Greene
Associate Judge
Beaufort County Court
Post Office Box 1124
Beaufort, SC 29902
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The Honorable John T. Black
Judge, Colleton County Court
Walterboro, SC 29488
(803) 549-7623

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